IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY SIXTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Mr. JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 21674 of 2004

Between:

Ramesh S/o.Anthappa
TET Shop at EKMAI Mandal Basheerabad, Ranga Reddy District.

..... PETITIONER

AND

The Prohibition and Excise Superintendent Ranga reddy district at Narayanguda, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ, order or direction more particularly one in the nature of writ of Mandamus declaring the impugned order in Proc.in CR.No.C1/8734/04 dt.5.11.2004 passed by the respondent as arbitrary, illegal and without jurisdiction and in violation of Principles of natural justice and consequently direct the respondent not to cause any interference in conducting the business of the petitioner.

Counsel for the Petitioner:MR.VIJAY KUMAR HEROOR

Counsel for the Respondent : GP FOR PROHIBITION & EXCISE

The Court at the stage of admission made the following ORDER:

Petitioner is a licensee under T.F.T. scheme and he is running a toddy shop at Ekmal of Basheerabad Mandal, Rangareddy District. On 23.09.2004, his shop was inspected by the Excise Sub-Inspector and samples were drawn. The preliminary examination of the samples of toddy discloses that it was adulterated with Chloral Hydrate. A case in C.O.R.No.233 of 2004-05 was registered under Section 37(a) of the A.P. Excise Act, 1968 (for short 'the Act'). Through order dated 05.11.2004, the respondent suspended the licence of the petitioner. The same is challenged in this writ petition.

Sri Vijay Kumar Heroor, learned counsel for the petitioner, submits that though the suspension is ordered pending enquiry, the respondent has recorded definite finding as to the involvement by the petitioner was violation of conditions and thereby the suspension deserves to be treated as a substantive punishment. He submits that such a measure can be resorted to only after issuance of notice, as contemplated under proviso to Section 31(1) of the Act. He places reliance upon the Judgments of this Court in *M/s Sree Devi Wines v. The Deputy Commissioner of Excise, Kakinada* and *Sunil v. Assistant Commissioner of Prohibition and Excise/Excise Superintendent, Twin Cities of Hyderabad, Narayanaguda*.

Learned Government Pleader, on the other hand, submits that the observation

made in the impugned order is only tentative in nature and the question as to whether the petitioner had indulged in acts of adulteration can be decided after conducting an enquiry. She contends that the concluding portion of the order clearly discloses that the suspension was ordered as an interim measure and pending enquiry.

Through the impugned order, the respondent suspended the licence of the petitioner. The Act or the Rules made there under do not contain any independent provision dealing with the suspension pending enquiry. Section 31 of the Act empowers the licensing authority to suspend or cancel the licence, if the licensee is found to have violated the provisions of the Act and Rules and the conditions of the licence. The proviso to sub-section (1) of Section 31 mandates that before the licence is cancelled or suspended, an opportunity of making representation shall be given to the licensee. Suspension referred to in this proviso is invariably the one inflicted as a substantive punishment. Its reference along with “cancellation” clearly indicates the same.

Suspension, as a measure, pending enquiry has always been treated as incidental to the exercise of the power to grant licence. Wherever the suspension is ordered, as a measure, pending enquiry, it is not required to be preceded by a notice. Many a time it may prove to be a step defeating the very basis. If the allegation is that a licensee is indulging in the acts, which are injurious to health or hazardous to general public, permitting such a licensee to carry on such business even after noticing the irregularities may result in serious consequences.

It is true that in the Judgments relied upon by the learned counsel, this Court held that if the findings are recorded as final in the orders of suspension, the same need to be treated as a substantive punishment. In this case, though an observation is made as to the complicity of the petitioner, and violation of the provisions of the Act and conditions of licence, the fact that it is resorted to as a measure pending enquiry and in the public interest clears the doubt in this regard. To protect the interests of the petitioner, any observation made in the order as to the complicity of the petitioner can be treated as provisional, which, in turn, shall not have any bearing on the enquiry that would be conducted after issuance of the notice.

Hence, the writ petition is disposed of directing that the observation made in the impugned order that the petitioner has indulged in acts of adulteration shall not be treated as final and the question as to whether the petitioner has violated the conditions of licence or indulged in acts of adulteration shall be decided only after considering the explanation which the petitioner may submit in response to the show cause notice.

The impugned order shall be treated as the show cause notice and it shall be open to the petitioner to submit his explanation within one week from today. The respondent shall pass final orders within four weeks from the date of receipt of the explanation. In case, such a final order is not passed, the suspension of licence shall stand kept in abeyance and it shall be open to the petitioner to carry on business, subject to the other conditions of licence. No order as to costs.

26.11.2004

Note:

Mark L.R. copies.

Issue CC by 29.11.2004

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To

1. One fair copy to the Hon'ble Mr. Justice L. Narasimha Reddy (for His Lordships Kind perusal)
2. The Prohibition and Excise Superintendent Ranga reddy district at

Narayanguda, Hyderabad.

3. Two CCs. to the G.P. for Prohibition & Excise, High Court of A.P., Hyderabad (OUT)

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5. The Under Secretary, Union of India, Mjinistry of Law, Justice and Company Affairs, New Delhi.

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